IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

(1) R.S.R.T.C. & anr. Vs. Fatma Bano & ors.

S.B.CIVIL MISC. APPEAL NO.183/1992

(2) Fatma Bano & ors. Vs. Rawat Khan & ors.

S.B.CIVIL MISC. APPEAL NO.118/1994

Against the award dated 16.07.1991 made by the Motor Accidents Claims Tribunal, Bali in Claim Case No.66/1988.

Date of Judgment : 11th August 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. B.S.Bhati for the RSRTC.
Mr. Kailash Trivedi for the claimants.

BY THE COURT:

These two appeals have been preferred respectively by the owner of the vehicle involved in the accident and by the claimants against the same award dated 16.07.1991 made by the Motor Accidents Claims Tribunal, Bali in Claim Case No.66/1988 and hence were heard together and are taken up for disposal by this common judgment.

The accident in question occurred on 06.03.1984 at 9.15 a.m. on Bali to Falna Road in Pali District; the deceased Habib Ahmed riding his motorcycle bearing registration No. RJT 5112 was hit by oncoming bus bearing registration No.RRM 1973 belonging to the appellant-Rajasthan State Road Transport Corporation ('the Corporation') and driven by the non-applicant No.1 Rawat Khan. Habib Ahmed sustained several injuries and succumbed on the spot.

Narrating the incident, the claimants wife, minor children and mother of the deceased submitted the claim for compensation with the averments that the deceased while riding his motorcycle with the pillion rider Ghanshyam was hit by the oncoming bus that was driven in a brisk speed on extreme wrong side; and the deceased and the motorcycle were dragged along and the bus came to halt after covering a long distance; and that driver of the bus had been challaned for offences under Sections 279, 337, 338 and 304A of the Indian Penal Code. Stating the liability of the non-applicants for compensation, the claimants averred for quantification that the deceased was 34 years in age and was employed as a Lower Division Clerk in the Office of the Assistant Engineer, Rajasthan State Electricity Board (RSEB), Falna earning net salary at Rs.877.66; that the claimants were dependent solely

upon him; that he was likely to have served for 24 more years and would have earned increments and revision of pay scale and other benefits during and after retirement. The claimants claimed Rs.4,62,396.08 towards pecuniary loss and Rs.10,000/- for loss of consortium for the claimant No.1.

The non-applicants No.2 and 3, the owners of the offending vehicle, while denying generally the claim averments alleged that the accident was caused by uncontrolled speed driving of the motorcycle by the deceased although the driver of the bus was proceeding at the prescribed speed with all caution and the bus came to halt immediately upon application of breaks and in the alternative also suggested that even if it be a case of contributory negligence, larger share of negligence remains with the deceased and, therefore, the claimants were not entitled for any compensation.

After framing of relevant issues on the question of liability towards accident and quantum of compensation, the claimants while producing relevant documentary evidence including the police investigation papers, photographs of the scene of accident and the employment income of the deceased, also examined in oral evidence PW-1 Rasheed Ahmed, brother of the deceased working as UDC, RSEB, Falna in relation to the income of the deceased, PW-2 Ghanshyam Sharma, another LDC with RSEB, Falna who was

the pillion rider with the deceased at the time of accident and PW-3 Mangal Puri, an employee with SBBJ, Bali said to be travelling in the offending bus at the time of accident. On the other hand, the non-applicants examined the bus driver, Rawat Khan as DW-1.

Learned Judge of the Tribunal, after hearing the parties and examining the oral and documentary evidence on record, referred to the fact that road construction work was in progress immediately before the place of accident towards Bali, the side bus was coming from, and observed that though the bus was on the wrong side but there was still enough space available for the motorcyclist to push down to his left hand side so as to avoid the accident; and with reference to the statement of Ghanshyam, PW-2 that before the accident, one bus had passed by, observed that the motorcyclist thereafter did not take extra care and may be that he was unable to spot the other oncoming bus and was in the process of taking the motorcycle back on the road when the accident occurred. The learned Judge also referred to the fact that as per the site report, there were dragging marks for 95 feet and, therefore, found that the bus was at a very high speed and also referred to the mechanical inspection report of the bus showing extra play in the steering, the breaks functioning on peddling thrice and there being some leakage in the break line pipe. Learned

Judge observed that the breaks of the bus were faulty and the bus was at a high speed but the motorcyclist also did not take complete care and despite having the space available did not stay on the left hand side, and therefore, it was a case of negligence on the part of both but larger negligence was of bus driver and, in this manner apportioned the negligence at 35% with the deceased motorcyclist and 65% with the bus driver. On the quantum of compensation, learned Judge referred to the last pay drawn by the deceased at Rs.877.66 and referred to the statement of PW-1 Rasheed Ahmed that deceased was likely to get Rs.1665/- in the month of May, 1988 and taking the aspects of increments into consideration, considered it appropriate to estimate the average income of the deceased at about Rs.1500-1600/- per month. However, the learned Judge, with reference to the fact of the deceased maintaining a motorcycle and the mother being dependant on other son too, took the dependency of the claimants at Rs.800/- per month and with application of a multiplier of 23, estimated the pecuniary loss at Rs.2,20,800/- and considered it appropriate to allow non-pecuniary loss for the wife of the deceased at Rs.10,000/-. In this manner, the learned Judge calculated the loss at about Rs.2,30,000/- and reducing 35% for contributory negligence of the deceased, considered it appropriate to award compensation in the sum of

Rs.1,50,000/-. Learned Judge thereafter, while considering issue No.3 for grant of relief, considered it appropriate to allow interest at the rate of 12% per annum, quantified the same till the date of award at Rs.1,19,000/- and held the claimants entitled in the sum of Rs.2,69,000/- and apportioned the same amongst the claimants and issued directions for cash payment and term deposits.

Assailing the award aforesaid, the Corporation as owner of the vehicle has submitted that the accident was caused solely for the negligence of the motorcyclist and no liability could have been fastened on the appellant. The quantum of compensation awarded while taking the expected income of the deceased at double the last pay and by application of multiplier of 23 has also been challenged being highly excessive . The claimants on the other hand have assailed the award of compensation being too low and inadequate and have submitted that there was no reason to take dependency only at about 50% of the income of the deceased and in view of the family set up, dependency ought to have taken at 80%. The finding on 35% contributory negligence of the deceased has also been assailed.

Having heard learned counsel for the parties and having examined the entire record, this court is satisfied that impugned award remains erroneous and cannot be approved

and in the ultimate analysis, the compensation awarded by the Tribunal deserves modification with upward revision.

On the question of liability towards accident, having examined the evidence available on record, this Court is satisfied that the view taken by the learned Judge of the Tribunal cannot be said to be one of the possible views of the evidence and cannot be approved. The learned Judge has assumed that the motorcyclist was having space of about 7-8 feet available on his left hand side and could have pushed furtherer left to avoid collision and that despite earlier negotiating a bus he did not become more conscious and may be that he did not spot the other oncoming bus. On these considerations, the learned Judge has fastened 35% liability on the deceased. Having examined the entire evidence, this Court is of the view that not a fraction of liability towards accident could be fastened on the motorcyclist; and on the contrary the fault lies absolutely and exclusively with the bus driver and the owner.

The fundamental fact remains undeniable that the bus hit the deceased on its extreme wrong side. The site inspection report and so also the photographs of the scene of incident make it apparent that the bus was on extreme other side of the road i.e. on its extreme right hand side. However, it has been suggested that the bus took to the right hand side for

some construction work on the road. The site plan Ex.13 shows road construction at a place prior to the place of incident. From the photographs available on record, it is not borne out that for any such alleged construction work, the road on the correct side of the bus was absolutely blocked or was closed for traffic so that the bus was required to be taken to the other lane on the right hand side. Learned Judge has referred to a chain of stones by the side of the bus visible in the photographs and therefrom has assumed that construction work was in progress on the road on the left hand side of the bus. The learned Judge has failed to consider that such chain of stones is placed on both the sides of the bus and has obviously been placed encircling the vehicles and the dead body and the entire scene of accident; and such chain of stones has nothing to do with the alleged construction work. In fact, in none of these photographs, any indication of any road construction activity is available on the left hand side of the bus and on the contrary the photographs Ex.6 and 7 taken from the front of the bus show it clearly that there was no such construction activity in progress on the road at the left-hand side of the bus at the place of the incident. In fact, the construction activity, whatever, was behind the point of accident and such part of the road had already been negotiated by the bus as is apparent from the site plan Ex.13.

In any case, it is apparent that there was enough space available to the bus on its left hand side at the scene of accident where the bus could have proceeded ahead without going into and covering the other wrong side lane; but the bus has consciously gone down on the right hand side and only explanation therefor could be that the bus driver was adventuring in overtaking as pointed out by PW-3, the occupant of the bus at the time of accident.The pillion rider of the motorcycle, PW-2 Ghanshyam has specifically pointed out that the accident occurred after one bus had already passed by and then the motorcycle was hit by the next bus following. The point of impact and the entire dragging of the ill-fated motorcycle and its rider are on the right-hand side of the bus and in such a scenario, there appears no reason or justification to fasten any liability towards accident on the motorcyclist.

Even if it be assumed for the sake of arguments that there was some impediment for the bus to proceed in its lane and for that matter, it was required to be pushed to the right hand side, then the bus driver had extra duty and responsibility to lower down the speed of the bus and to take extra caution for the oncoming traffic that would obviously be coming in its correct lane. What to say of caution, the bus driver was absolutely negligent in driving at a rather higher speed and

could not bring the bus to halt for good 95 feet even after the impact. The bus driver Rawat Khan, DW-1, has been totally untruthful and had the audacity to suggest that the bus was moving at a speed of about 10-15 (kilometers per hour) and that it came to halt without application of breaks and that it went on the wrong side after the impact. Not a word of his testimony is even in the vicinity of truth. The site report Ex. 12 and the photographs particularly Ex.3, 9 and 10 are telling on the face of the record that the bus hit the victim and the motorcycle on the extreme wrong side and then dragged them further to the wrong side for a very long distance. The independent witness PW-3 Mangal Puri traveling in the offending bus inspires confidence in his deposition about higher speed of the offending bus in an attempt to overtake the bus ahead. The signs of dragging clearly visible on scene establish beyond doubt that the bus was at extra higher speed and was driven in most reckless manner on its wrong side.

That the bus was not roadworthy is amply established from its Mechanical Inspection Report Ex. 15, wherein it has been clearly pointed out that there was too much of play in the steering; that the breaks could be applied on peddling thrice; and that the beak pipe line was also leaking. The appellants, owners of the bus, obviously omitted to keep the vehicle in good repair and let it loose on the road in the hands of an

unconcerned driver, who, despite driving such an unworthy vehicle was intrepid enough to intrude into the incorrect side inhaling an innocent life. The present one is clearly a case of total negligence on the part of the bus driver and owner both that has resulted in the accident causing fatal injuries to the victim and not an iota of negligence could be imputed upon the victim. The finding on issue No. 1 in so far liability towards accident has been fastened on the victim at 35% cannot be sustained and is set aside and it is held that the fatal accident was a result of total negligence on the part of the non-applicants, both the bus driver and the bus owner.

On quantification of compensation, the learned Judge of the Tribunal has assessed the pecuniary loss at Rs. 2,20,000/- by taking average income of the deceased at Rs. 1500-1600/- per month but dependency of the claimants only at Rs. 800/- per month and has applied the multiplier of 23. Learned Judge has further allowed Rs. 10,000/- for loss of consortium and then, from the total loss of Rs. 2,30,000/- has reduced 35% to award Rs. 1,50,000/- as compensation. The assessment needs modification.

The deceased was in settled employment as LDC with RSEB and in view of his age at 34 years, had all reasonable chances of substantial future increments. Accounting for certainties as well as uncertainties, for the purpose of average

income, a figure about 1.5 times the last known income of Rs. 877.66 could be adopted leading to average income at Rs. 1316.49. Learned judge has though taken the average income at about Rs. 1500-1600/- per month, but has taken the dependency only at Rs. 800/- per month with reference to the facts that the deceased was maintaining a motorcycle and the mother claimant No. 6 was having dependency on other son Rasheed Ahmed too. The deceased had in his family wife and four minor children apart from the mother; and in view of the family set up; it does not appear justified to assume the contribution by the deceased to his wife and children only at about 50% of his income and instead, in place of usual one-third on the personal pocket of the deceased, it appears appropriate in this case to deduct only about one-fourth. An average loss of contribution at Rs. 987.36 per month could thus be considered in the present case, rounded up to Rs. 990/- per month leading to a multiplicand of Rs. 11,880/- per annum. In view of the age of the deceased at about 34 years, and in the overall circumstances, it appears appropriate to apply multiplier of 16 and, therefore, pecuniary loss deserves to be allowed at Rs. 1,90,080/-. The wife of the deceased deserves to be allowed Rs. 10,000/- for loss of consortium, and the children Rs. 5,000/- each for the loss of love affection and guidance of their father and the mother Rs. 5,000/- for

loss of services of her son leading to total non-pecuniary loss at Rs. 35,000/-. A further sum of Rs. 2,500/- deserves to be allowed for funeral expenses. Therefore, the claimants are entitled to compensation in the sum of Rs. 2,27,580/- (1,90,080 + 35,000 + 2,500) in place of Rs. 1,50,000/- allowed by the Tribunal.

In this case, the Tribunal has allowed interest at the rate of 12% per annum from the date of filing of the claim application i.e. 04.09.1984 and has included the component of interest till the date of making of award i.e. 16.07.1991 while making apportionment of the award amount amongst the claimants. It was also pointed out during the course of arguments in these appeals that the Tribunal omitted to order adjustment of the amount of interim compensation of Rs. 15,000/- allowed under Section 92-A of the Motor Vehicles Act, 1939. The record of the claim case shows that of course such an order for interim compensation was made on 06.11.1986 and a cheque No. 959037 was sent by the Corporation in the name of the Tribunal but the same was returned to the counsel for the Corporation for proper compliance of the order passed by the Tribunal (vide letter at page D33/7 of the record) and on various dates of hearing it was given out on behalf of the claimants that payment had not been received and the non-applicants were directed to make

payment (last such order-sheet being of 15.12.1990) but thereafter the case proceeded on evidence and there does not appear any proof on record of the appellant Corporation having made such payment. In this view of the matter, though the said amount of Rs. 15,000/- is ordered to be adjusted in the enhanced amount of Rs. 77,580/- (2,27,580/- - 1,50,000/-) and the claimants shall, therefore, be entitled to further amount of Rs. 62,580/- only; but so far the rate and period of interest are concerned, it is considered appropriate to direct that if the said amount of Rs. 15,000/- was not paid till the date of making of the award by the Tribunal, then the enhanced amount shall carry interest @ 7.5% per annum from the date of filing of the claim application; and if the said sum of Rs. 15,000/- had been paid prior to making of final award by the Tribunal, then the enhanced amount shall carry interest from the date of award i.e. 16.07.1991. It is also made clear that if the said amount of interim compensation be found not paid yet, the same shall be paid with interest @ 12 per annum from the date of filing of claim application.

As a result of the aforesaid:

(a) the appeal filed by the owner of the vehicle, CMA No. 183/1992 is dismissed;

(b) the appeal filed by the claimants, CMA No.118/1994 is partly allowed and the impugned award dated 16.07.1991 is

modified and the claimants are awarded further compensation in the sum of Rs.62,580/- alongwith interest at the rate of 7.5% per annum payable from 16.07.1991 if the amount of interim compensation was paid prior to making of the final award by the Tribunal; else from the date of filing of claim application i.e. 04.09.1984. If the amount of Rs. 15,000/- of interim compensation has not been paid yet, it shall be paid by the appellant Corporation with interest @ 12% per annum from the date of filing of the claim application. It shall be required of the Corporation to deposit the entire amount now payable within 30 days from today with the Tribunal. Upon deposit, the Tribunal shall carry out apportionment and disbursement of the amount in the same manner and proportion as contemplated by the impugned award.

(c) In the circumstances of the case, parties are left to bear their own costs of these appeals.

(DINESH MAHESHWARI),J.

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